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No. 85-2125

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

FAYE S. BAGGIANO, IN HER OFFICIAL CAPACITY, AS COMMISSIONER OF THE ALABAMA MEDICAID AGENCY, AND THE ALABAMA MEDICAID AGENCY,
Petitioners,

v.

ALACARE, INC.-NORTH, AN ALABAMA CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No. 82-2125

FAYE S. BAGGIANO, IN HER OFFICIAL CAPACITY, AS COMMISSIONER OF THE ALABAMA MEDICAID AGENCY, AND THE ALABAMA MEDICAID AGENCY,
Petitioners,

v.

ALACARE, INC.-NORTH, AN ALABAMA CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF IN OPPOSITION

SUMMARY OF ARGUMENT

The petition for a writ of certiorari does not point to any compelling reason why this Court should address the issue sought to be raised. The question of exhaustion of state remedies as a prerequisite to actions under 42 U.S.C. § 1983 has been fully and adequately dealt with by this Court, and the decision below is consistent with the precedent announced by this Court.

The petition does not assert any appropriate ground under Rule 17 of the Rules of the Supreme Court of the United States sufficient to justify the issuance of a writ of certiorari in this case.

ARGUMENT[1]

The petition for a writ of certiorari in this cause does not assert any of the Rule 17 reasons customarily relied upon by the Court for the granting of a writ. The decision below (*AlaCare, Inc.-North v. Baggiano*, 785 F.2d 963 [11th Cir. 1986]) is not shown to be in conflict with a decision of another federal court of appeals on the same matter,[2] nor is the decision shown to constitute a departure from the accepted and usual course of judicial proceedings. While the decision did involve an important question of federal law, it cannot be said either that the issue here raised has not been settled by this Court or that the Eleventh Circuit decision is in conflict with applicable decisions of this Court.

The Petitioners maintained below that *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496 (1982), did not prevent a finding of an implied exhaustion requirement for Medicaid actions under 42 U.S.C. § 1983. Both the district court (App. to Petition, 20a-21a) and

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[1] In compliance with the requirements of Rule 28.1 of the Rules of the Supreme Court of the United States, the Court is advised that the parent corporation of AlaCare, Inc.-North is Age, Inc. Corporations affiliated with the Respondent are Cullman Nursing Services, Inc., Woodland Village Health Care Center, Inc., South Morgan Health Care, Inc., Haleyville Health Care Center, Inc., West Morgan Health Care Center, Inc., and Pike Health Services, Inc.

[2] On the contrary, in the only other federal circuit court of appeals case alluded to in the decision of the court below, which addressed the distinctions between Patsy v. Board of Regents of the State of Florida, 457 U.S. 496 (1982), and Fair Assessment in Real Estate Association v. McNary, 454 U.S. 100 (1981), the Sixth Circuit appears to have adopted the same rationale as did the Eleventh Circuit in the instant case. See Loudermill v. Cleveland Board of Education, 721 F.2d 550, 555, n. 5 (6th Cir. 1983), *aff'd on other grounds*, —— U.S. ——, 84 L.Ed. 2d 494, 105 S.Ct. 1487 (1985).

Neither the Sixth Circuit nor the Eleventh Circuit appears to have had any significant difficulty in construing the *Patsy* and the *McNary* cases and in harmonizing their teachings.

the Court of Appeals (785 F.2d at 966) agreed with the Petitioners upon this point. However, the Court of Appeals noted that "[t]he evidence of a congressional preference for imposing an exhaustion requirement in Medicaid cases is simply inevident, either explicitly or implicitly." 785 F.2d at 967. In view of *Patsy*, the Court of Appeals felt that "the presumption is *strongly* in favor of no exception." 785 F.2d at 967. The panel then reasoned that the congressional requirement that a state establish review machinery did not of itself evidence an intent to require exhaustion, because there is in almost every § 1983 case some alternate form of redress available at state law. If the availability of such alternate remedies were considered as bars to direct access to federal court under § 1983, the appeals court feared that the "result would be a major, dramatic narrowing of the scope of relief available under Section 1983." 785 F.2d at 968.

The court below alluded to, and rejected the reasoning in, two post-*Patsy* district court cases which held that state remedies established pursuant to congressional Medicaid requirements must be exhausted before litigants could resort to § 1983 claims. See *Arden House, Inc. v. Heintz*, 612 F.Supp. 81, 85 (D. Conn. 1985); *St. Joseph Hospital v. Electronic Data Systems Corp.*, 573 F.Supp. 443, 450 (S.D. Tex. 1983). In their petition filed in this Court, the Petitioners add one other such district court case. See *Al-Charles, Inc. v. Heintz*, 620 F.Supp. 327 (D. Conn. 1985). The Eleventh Circuit noted when this matter was before it that those courts simply reasoned that, since the Medicaid statute requires the creation of a state administrative process to review claims, the congress "must . . . have intended" that they be used prior to institution of a § 1983 claim. 785 F.2d at 967. Understandably, the Eleventh Circuit found this reasoning to be insufficient to satisfy the standards laid down by this Court in *Patsy*.

Apparently no other court of appeals besides the Eleventh Circuit has, since *Patsy*, addressed the specific

question of whether exhaustion of state remedies established pursuant to the Medicaid statute is a prerequisite to the institution of a § 1983 claim. The Fourth and Fifth Circuits seem to have assumed that exhaustion is not required in such cases. See *Randall v. Lukhard*, 709 F.2d 257, 261 (4th Cir. 1983), *aff'd and rev'd in part on other grounds*, 729 F.2d 966 (4th Cir. 1984) (*en banc*), *cert. denied*, —— U.S. ——, 83 L.Ed. 2d 152, 105 S.Ct. 222 (1984); *Curtis v. Taylor*, 625 F.2d 645, 649 (5th Cir. 1980), *modified on other grounds*, 648 F.2d 946 (5th Cir. 1980).

The district courts sitting outside the territory of the Eleventh Circuit which have addressed the exhaustion question in Medicaid cases generally do not appear to have adequately examined the legal question in the light of *Patsy*, and certainly they did not explore the *Patsy* teaching with the depth employed by the Eleventh Circuit in the instant case.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari is due to be denied. The Petitioners have not revealed any compelling reason under Rule 17 why it should be granted. Additionally, it is submitted that the decision of the Eleventh Circuit Court of Appeals represents a correct application of the law as established by the precedent of the decisions of this Honorable Court.

Respectfully submitted,

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August 1, 1986